

JUL 22 2008

1300 North Seventeenth Street
Suite 1800
Arlington, Virginia 22209
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Fax: (703) 312-6666

**ANTONELLI,
TERRY, STOUT & KRAUS, LLP****Fax****To: OFFICE OF PETITIONS****From:** Donald E. Stout**Fax:** (571) 273-8300**Pages:** 16 pgs.**Phone:** (571) 272-3231**Date:** July 22, 2008**Re: USSN 09/083,180, f. MAY 22, 1998****CC:****Marc FLEURY et al**

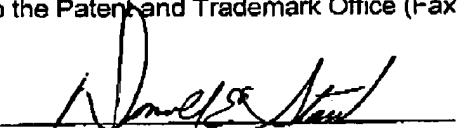
☐ Urgent ☒ For Filing ☐ Please Comment ☐ Please Reply ☐ Please Recycle

*** Comments:**

I hereby certify that the following documents:

- (1) Credit Card Payment Form;
- (2) Response to Decision on Petition Dated June 26, 2008 (2 pages);
- (3) Petition for Revival of An Application for Patent Abandoned Unintentionally Under 37 C.F.R. 1.137(b) (2 pgs.);
- (4) Response to Notice of Missing Parts and Abandonment previously submitted on 8/5/1999 and August 7, 1999 (10 pgs.).

are being facsimiled to the Patent and Trademark Office (Fax No. 571/273-8300) on July 22, 2008.


Donald E. Stout

If you experience any problem regarding this transmission, please contact Donna ext. (703) 312-6649

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JUL 22 2008

612.36255X00
4130/BA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Marc FLEURY et al
Serial No.: 09/083,180
Filed: May 22, 1998
For: IMPROVED DEVICE FOR MEASURING
PHYSICAL CHARACTERISTICS OF
A POROUS SAMPLE
Art Unit: To Be Assigned
Examiner: To Be Assigned

**RESPONSE TO DECISION ON PETITION
DATED JUNE 26, 2008**

ATTN: OFFICE OF PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

July 22, 2008

Sir:

The June 26, 2008 Decision on Petition has denied Applicants' Petition seeking reinstatement of the above-referenced application which was abandoned for failure to timely file a Response to the Notice to File Missing Parts of Application mailed on June 9, 1998.

Applicants forthwith have filed a Petition Pursuant to 37 C.F.R. §1.137(b) for unintentional abandonment accompanied by the proper fee.

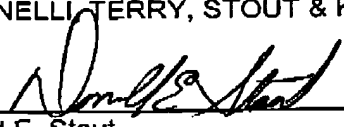
Accordingly, no response will be filed at this time in response to the Decision on Petition.

A copy of Applicants' Petition for Revival of Application for Patent Abandoned Unintentionally Under 37 C.F.R. §1.137(b) is submitted herewith to complete the record on the Petition process.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (612.36255X00) and please credit any excess fees to such Deposit Account.

Respectfully submitted,

ANTONELLI, TERRY, STOUT & KRAUS, LLP



Donald E. Stout
Registration No. 26,422
(703) 312-6600

DES:dlh

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JUL 22 2008

PTO/SB/64 (01-08)

Approved for use through 07/31/2008. OMB 0851-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
612,36255X00

First named inventor: Marc FLEURY et al

Application No.: 09/083,180

Art Unit: To Be Assigned

Filed: May 22, 1998

Examiner: To Be Assigned

Title: Improved Device for Measuring Physical Characteristics of a Porous Sample

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☒ Other than small entity - fee \$ 1,540.00 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____ (identify type of reply):

- ☒ has been filed previously on August 7, 1998
☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____

- ☐ has been paid previously on _____
☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

07/22/2008 VBUI11 00000053 09083180

01 FC:1453

1540.00 0P

PTO/SB/84 (01-08)

Approved for use through 07/31/2008. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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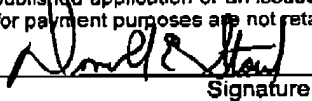
3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.


Signature

July 22, 2008

Date

Donald E. Stout

26,422

Antonelli, Terry, Stout & Kraus, LLP
Suite 1800

Registration Number, if applicable

(703) 312-6600

Arlington, Virginia Address 22209

Telephone Number

Address

Enclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☐ Additional sheets containing statements establishing unintentional delay☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- ☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date

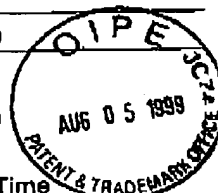
Signature

Typed or printed name of person signing certificate

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JUL 22 2008

Patent ☒ Trademark ☐ 612.36255X00
Serial No. 08/083,180 Filed May 22, 1998
Applicant(s) Marc FLEURY et al
Papers filed herewith on August 5, 1999
☐ Fees \$0.00 ☐ Assignment
☐ New Application ☐ Letter to Draftsman
☐ Amendment ☐ Priority Documents
☐ Notice of Appeal ☐ Petition for Ext. of Time
☐ Appeal Brief ☐ Sheets of Formal Drawings
☒ Other Response to Notice of Abandonment,
Copy of 8/7/98 Post Card, Copy of 8/7/98
Response to Notice to File Missing Parts & Lt.
Declaration, (copy of Not. of Aband.) (9 pgs.)



Receipt is hereby acknowledged of the papers filed as indicated in connection with above identified case.
COMMISSIONER OF PATENTS AND TRADEMARKS

(DES/ALLA)

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JUL 22 2008

612.36255X00

4130/JC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Marc FLEURY et al
Serial No.: 08/083,180
Filed: May 22, 1998
For: IMPROVED DEVICE FOR MEASURING PHYSICAL
CHARACTERISTICS OF A POROUS SAMPLE
Attn: Customer Service Center
Initial Patent Examination Division

RESPONSE TO NOTICE OF ABANDONMENT

Assistant Commissioner
for Patents
Washington, D. C. 20231

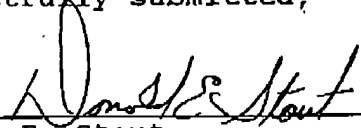
August 5, 1999

Sir:

In response to the Notice of Abandonment mailed July 9, 1999, attached hereto is a copy of Applicants' original Response to Notice to File Missing Parts of Application mailed August 7, 1998 in connection with the above-identified application, Applicants filed therewith an executed Declaration and Power of Attorney for Patent Application in compliance with 37 C.F.R. §1.63. In addition, Applicants submitted a check for \$130.00 to cover the surcharge for the filing of the belated Declaration in accordance with 37 C.F.R. §1.16(e). Also enclosed herewith is a copy of the post card receipt.

To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. §1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (612.36255X00) and please credit any excess fees to such deposit account.

Respectfully submitted,



Donald E. Stout
Registration No. 26,422
ANTONELLI, TERRY, STOUT & KRAUS, LLP

Attachments

DES:dlh

JUL 22 2008



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO./TITLE
--------------------	---------------------	-----------------------	---------------------------

09/083,180 05/22/98 FLEURY M 612.36255X00

020457 0212/0709
ANTONELLI TERRY STOUT AND KRAUS
SUITE 1800
1300 NORTH SEVENTEENTH STREET
ARLINGTON VA 22209

612.36255X00

NOT ASSIGNED

clear filed 8/7/98

0000

DATE MAILED:

07/09/99

NOTICE OF ABANDONMENT UNDER 37 CFR 1.53(f) or (g)
(Filing Date Granted)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on JUNE 9, 1998.

- ☒ No reply was received.
☐ The reply received on _____ was untimely.
☐ The reply received on _____ was improper. The reply did not include:

- ☐ 1. The surcharge under 37 CFR 1.16(e) required for filing the basic filing fee or oath or declaration on a date later than the filing date of a nonprovisional application.
☐ 2. The surcharge under 37 CFR 1.16(i) required for filing the basic filing fee or cover sheet on a date later than the filing date of a provisional application.
☐ 3. The full amount of the basic filing fee under 37 CFR 1.16 (a), (f), (g), (k).
(Note: A nonprovisional application may not be relied on for benefits under 35 U.S.C. 120 and 37 CFR 1.78 unless the processing and retention fee set forth in 37 CFR 1.21(l) is paid within the one year period set forth in 37 CFR 1.53(f). A provisional application may not be relied on for benefits under 35 U.S.C. 119(e) and 37 CFR 1.78 unless the basic filing fee is paid).
☐ 4. The oath or declaration of all the inventor's required under 37 CFR 1.63 for this nonprovisional application.

☐ The letter of Express Abandonment filed on _____ is acknowledged.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(c).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(c).

Any questions concerning petitions to revive should be directed to "Office of Petitions" at (703) 305-9282.

C. B. Barnes
Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 2-COPY TO BE RETURNED WITH RESPONSE

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JUL 22 2008

Patent ☒ Trademark ☐ 612.36255X00
Serial No. 09/083,180 Filed May 22, 1998
Applicant(s) Marc FLEURY et al
Papers filed herewith on August 7, 1998
☒ Fees \$ 170.00 ☒ Assignment (2 pgs.) \$40.00
☐ New Application ☐ Letter to Draftsman
☐ Amendment ☐ Priority Documents
☐ Notice of Appeal ☐ Petition for Ext. of Time
☐ Appeal Brief ☐ Sheets of Formal Drawings
☒ Other Response to Notice to File Missing Parts,
and Late Declaration (copy of Notice) (5 pgs.)
(130.00), and Information Disclosure Statement,
1449 Fr. Srch Rept., Trans. (7 pgs.) & 2 EPO
& 2 U.S. Refs.

Receipt is hereby acknowledged of the papers filed as indicated in connection with above
identified case.
8/9/98 8/12/98
COMMISSIONER OF PATENTS AND TRADEMARKS

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JUL 22 2008

612.36255X00
4130/JC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Marc FLEURY et al
Serial No.: 08/083,180
Filed: May 22, 1998
For: IMPROVED DEVICE FOR MEASURING PHYSICAL
CHARACTERISTICS OF A POROUS SAMPLE
Attn: Customer Service Center
Initial Patent Examination Division

**RESPONSE TO NOTICE TO FILE MISSING PARTS OF APPLICATION -
SUBMISSION OF LATE DECLARATION**

Assistant Commissioner
for Patents
Washington, D. C. 20231

August 7, 1998


Sir:

In response to the Notice to File Missing Parts of Application dated June 9, 1998 in connection with the above-identified application, Applicants are filing herewith an executed Declaration and Power of Attorney for Patent Application in compliance with 37 C.F.R. §1.63. In addition, Applicants are also submitting a check for \$130.00 to cover the surcharge for the filing of the belated Declaration in accordance with 37 C.F.R. §1.16(e).

To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. §1.136. Please charge any shortage in fees due in connection with the filing of this

paper, including extension of time fees, to Deposit Account
No. 01-2135 (612.36255X00) and please credit any excess fees
to such deposit account.

Respectfully submitted,



Donald E. Stout
Registration No. 26,422
ANTONELLI, TERRY, STOUT & KRAUS, LLP

Attachments

DES:dlh

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07/22/2008 10:54 FAX 7033126666

A T S K

018/016

JUL 22 2008



UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO./TITLE
09/082,180	05/22/98	FLEURY	N 613.36255)

020457

0222/0009

ANTONELLI TERRY STOUT KRAUS

NOT ASSIGNED

1300 NORTH SEVENTEENTH STREET SUITE 1800

ARLINGTON VA 22209

DATE MAILED:

06/09/98

NOTICE TO FILE MISSING PARTS OF APPLICATION

Filing Date Granted

An Application Number and Filing Date have been assigned to this application. The items indicated below, however, are missing. Applicant is given TWO MONTHS FROM THE DATE OF THIS NOTICE within which to file all required items and pay fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a). If any of items 1 or 3 through 5 are indicated as missing, the SURCHARGE set forth in 37 CFR 1.16(e) of \$65.00 for a small entity in compliance with 37 CFR 1.27, or \$130.00 for a non-small entity, must also be timely submitted in reply to this NOTICE to avoid abandonment.

If all required items on this form are filed within the period set above, the total amount owed by applicant as a
☐ small entity (statement filed) ☒ non-small entity is \$ 130.00

☐ 1. The statutory basic filing fee is:

- ☐ missing.
☐ insufficient.

Applicant must submit \$ _____ to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).

☐ 2. Additional claim fees of \$ _____, including any multiple dependent claim fees, are required.

\$ _____ for _____ independent claims over 3.

\$ _____ for _____ dependent claims over 20.

\$ _____ for multiple dependent claim surcharge.

Applicant must either submit the additional claim fees or cancel additional claims for which fees are due.

☒ 3. The oath or declaration:

- ☒ is missing or unexecuted.
☐ does not cover the newly submitted items.
☐ does not identify the application to which it applies.
☐ does not include the city and state or foreign country of applicant's residence.

An oath or declaration in compliance with 37 CFR 1.63, including residence information and identifying the application by the above Application Number and Filing Date is required.

☐ 4. The signature(s) to the oath or declaration is/are by a person other than inventor or person qualified under 37 CFR 1.42, 1.43 or 1.47.

A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.

☐ 5. The signature of the following joint inventor(s) is missing from the oath or declaration:

An oath or declaration in compliance with 37 CFR 1.63 listing the names of all inventors and signed by the omitted inventor(s), identifying this application by the above Application Number and Filing Date, is required.

☐ 6. A \$50.00 processing fee is required since your check was returned without payment (37 CFR 1.21(m)).

☐ 7. Your filing receipt was mailed in error because your check was returned without payment.

☐ 8. The application does not comply with the Sequence Rules.

See attached "Notice to Comply with Sequence Rules 37 CFR 1.821-1.825."

☐ 9. OTHER:

Direct the reply and any questions about this notice to "Attention: Box Missing Parts."

A copy of this notice MUST be returned with the reply.

G. McInerney
 Customer Service Center
 Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE